

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Marty Block, Chair
AB 1917 (Dickinson) – As Introduced: February 22, 2012

SUBJECT: Education finance: acquisition of food services.

SUMMARY: Requires the governing board of each California Community College district (CCC districts) and the Trustees of the California State University (CSU), and requests the Regents of the University of California (UC) to develop and adopt policies regarding the acquisition of food service. Specifically, this bill:

- 1) Requires CCC districts and CSU, and requests UC, to develop and adopt policies and procedures for the acquisition of food services to ensure that a service contractor fully discloses to the campus, auxiliary organization, or other unit of the segment all discounts, rebates, allowances, and incentives received by the service contractor from its suppliers. Requires suppliers to disclose and pay to the campus the full amount of the discount, rebate or credit that is based on purchases made on behalf of the institution. Requires language stating this requirement to be placed in all agreements covered by this bill.
- 2) Requires the discount, rebate or incentive to be paid to the institution during a mutually agreed upon time frame and a record of transactions to be available for review as part of any audit conducted pursuant to existing law.
- 3) Defines "services contractor" to include those providing food, janitorial, laundry, maintenance, window cleaning or landscape services.
- 4) Defines "rebate" to include any return of monetary value including, but not limited to, any volume discounts, allowances, or discount purchase incentives.
- 5) Provides that if the Commission on State Mandates determines this act to contain costs mandated by the state, reimbursement to local agencies and school districts are required.
- 6) Requires K-12 public schools to adopt the aforementioned policies to ensure that food service contractors disclose and reimburse all discounts, allowances, and incentives the contractor receives.

EXISTING LAW

- 1) Establishes UC as a public trust and confers the full powers of the UC upon the Regents, subject to legislative control only to the degree necessary to ensure the security of its funds and compliance with the terms of its endowments (Section 9 of Article IX of the California Constitution). Establishes a competitive bid threshold for goods and services purchased by UC of \$100,000; contracts under this amount can be awarded directly to a vendor or can be informally bid by soliciting bids from several vendors (Public Contract Code §10507.7).
- 2) Provides the CSU Trustees broad powers to establish policies and procedures governing the acquisition of services, facilities, materials, goods, supplies, or equipment. Requires the

policies to include a competitive means for obtaining best value while complying with legislative intent regarding competitive bids or proposals as expressed in the California Public Contracts Code (Education Code §89036).

- 3) Provides CCC governing boards authority to manage and control district property, including contracting for the procurement of goods and services (EC §70902). Authorizes CCC governing boards to enter into contracts for management consulting services related to food service for up to a one year term renewed on an annual basis, so long as the contract does not result in the elimination of classified personnel, among other requirements (EC §8804.5). Establishes various requirements for public bidding processes for CCC governing boards to enter into service contracts (Public Contract Code §20650).
- 4) Requires every contract involving the expenditure of public funds in excess of \$10,000 by any public entity to be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract. Requires every contract to contain a provision stating that the contracting parties shall be subject to that examination and audit (Government Code §8546.7).

FISCAL EFFECT: Unknown

COMMENTS: Double-referral. This bill was double-referred to the Assembly Education Committee, which heard and approved this bill on a vote of 7-to-3 on March 28, 2012. This analysis focuses on the higher education components of this legislation.

Background. On March 7, 2012 the Assembly Committee on Accountability and Administrative Review (AAR) held an oversight hearing on "Rebates and Transparency in K-12 and Higher Education Food Service Contracts." According to background information prepared by the Committee, food service companies are collecting potentially millions of dollars a year in off-invoice rebates from national suppliers through contracts with California schools, community colleges and public universities. In 2010, after significant controversy surrounding the amounts of those rebates, the U.S. Department of Agriculture enacted regulations requiring contractors under the federally-subsidized school meals program to disclose all discounts, rebates and other applicable credits received by the contractor and to credit those rebates back to the school. The regulations are designed to ensure that the limited school meals program resources are used as efficiently as possible and that federal agencies are only paying "net costs". After concerns were raised that large vendors were not returning rebates received, the New York Attorney General conducted an investigation, revealing that over a five-year period beginning in 2004, Sodexo received significant rebates from suppliers without acknowledging or passing the savings on to these schools—in violation of the contracts between Sodexo and the schools as well as state and federal laws. In July of 2010, Sodexo agreed to pay New York \$20 million to settle complaints.

Purpose of this bill. According to the author, current law allows universities to contract for food services but provides no guidance on how to do so. Many colleges and universities lack the knowledge that off-invoice rebates exist, let alone the amount of the rebates. This bill is intended to provide needed guidance to the UC, CSU, and CCC systems to ensure disclosure and remittance of off-invoice rebates. The author argues, "In economic times such as these, when cuts to higher education are implemented year after year, remittance of off-invoice rebates will offset the funds that are not being provided by the Legislature."

UC food service contracts. The UC Office of the President (UCOP) has identified four UC campuses that contract out for some or most of their food services: Davis, Irvine, San Francisco and Riverside. While these contracts do not appear to require the disclosure and reimbursement of rebates, existing law would authorize UC to negotiate contracts requiring disclosure and reimbursement of rebates. Further, UCOP has identified other benefits currently received by UC campuses through food service contracts with vendors such as Sodexo and Aramark. For example, campus agreements for food services can include provisions that require vendor-financed campus infrastructure improvements, sustainable practices, campus continuity of services and local food-sourcing. With regard to infrastructure improvements specifically, Davis and Irvine, which have vendors engaged in traditional meal service for resident undergraduates, have benefitted from extensive investments in capital facilities from their vendor at an approximate value of \$5 million (Davis) and \$9 million (Irvine) over the course of their recent multi-year contract periods.

CSU food service contracts. As previously noted CSU Trustees have broad authority over campus procurement policies for services and goods. The CSU Policy Manual for Contracting and Procurement contains detailed policies and procedures for selecting contractors for goods and services. While a complete accounting of these policies is beyond the scope of this analysis, it is important to note that these policies and procedures are generally designed to ensure responsible contractors and the best price/value for CSU, and contracts of greater than \$50,000 require a competitive bidding process. According to information provided by the author, six CSU campuses currently contract with food service providers: Bakersfield, East Bay, Monterey Bay, San Bernardino, San Francisco and Stanislaus. Of these campuses, the author notes that most indicate they are aware of off-invoice rebates but unaware of the rebates' value when contracts are negotiated. It appears that under existing law, CSU campuses would have the authority to enact provisions requiring contractors to credit manufacturer rebates to campuses.

CCC food service contracts. Each of California's 72 CCC districts is local controlled by elected governing boards. As such, CCC Chancellor's Office does not review or establish rules governing local vendor contracts entered into by individual districts. According to information provided by the author, a sample of CCC contracts reviewed by the Assembly Committee on Accountability and Administrative Review showed many off-invoice rebates were sanctioned by boilerplate industry language and at least one contract was silent on rebates, leaving open the question of whether rebates should have been remitted to the college. According to the Assembly Committee on Accountability and Administrative Review, during the course of their investigation, officials at Sierra College in Rocklin renegotiated an existing food service contract to reflect information provided by the Committee about off-invoice rebates. This example would suggest that legislation is not needed for CCC governing boards to negotiate contracts that require disclosure and reimbursement of off-invoice rebates, if so desired by the CCC district.

Prior legislation. AB 450 (Wieckowski) would have required CSU service contractors to disclose and credit manufacturer rebates to CSU campuses. In vetoing AB 450, the Governor stated that the bill "targets a narrow set of contracts between the California State University campuses and their food vendors. It aims to correct a problem that may or may not exist by requiring those vendors to disclose supplier discounts and pass them on to the campuses. Since they can already do this on their own, this measure is not necessary."

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

None on file

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